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10 Attorneys for Plaintiff
11 FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15
16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 STUDIVZ LTD., HOLTZBRINCK
20 NETWORKS GmbH, HOLTZBRINCK
VENTURES GmbH AND DOES 1-25,

21 Defendants.

Case No. 5:08-cv-03468 JF

Assigned To: Hon. Jeremy Fogel

**DECLARATION OF DR.
KATHARINA SCHEJA IN SUPPORT
OF FACEBOOK'S OPPOSITION TO
DEFENDANTS' MOTION FOR
ADMINISTRATIVE RELIEF**

1 I, Dr. Katharina Scheja, declare as follows:

2 1. I am an attorney and partner with the law firm of Heymann & Partner
3 Rechtsanwälte, Taunusanlage 1, Frankfurt, Germany 60329, German counsel for Facebook, Inc..
4 I make this Declaration in support of Facebook's Opposition to Defendants' Motion for
5 Administrative Relief. I am fully licensed to practice law in Germany and am in good standing
6 with my local bar. Except as set forth herein, I have personal knowledge of the facts stated herein
7 and if called as a witness, could and would competently testify thereto.

8 2. On July 18, 2008, Facebook filed suit against StudiVZ Ltd. ("StudiVZ") and the
9 Holtzbrink defendants before the United States District Court for the Northern District of
10 California in the United States of America (Civil File No C08 03468 HRL). I have been provided
11 with a copy of the Complaint, which is based on, among other things, violations of the U.S.
12 Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Lanham Act, 15 U.S.C. § 1125, and
13 California Penal Code § 502(c).

14 3. On July 18, 2008 StudiVZ filed suit against Facebook at the Landgericht Stuttgart
15 (District Court) (Civil File No. 17.O.423/08). In its Prayers for Relief, StudiVZ asked the Court to
16 declare (1) that Facebook did not have any claims against StudiVZ resulting from (i) German
17 trademark Nr. 306632713 and/or (ii) copyright of Facebook in the graphical design of its website
18 www.facebook.com and/or the software used to operate the website and/or the data accessible via
19 this website and/or (iii) design patent relating to the graphical design of the website
20 www.facebook.com, (2) the website www.studivz.net does not constitute an illicit copy of the
21 website www.facebook.com and (3) that StudiVZ had not violated contractual usage terms of the
22 website www.facebook.com.

23 4. The U.S. Complaint filed by Facebook before this Court was different in scope and
24 asserted different claims than the StudiVZ writ filed in Stuttgart. Therefore, under German law,
25 the Facebook action in the United States did not necessarily preclude StudiVZ's writ. Thus
26 Facebook had to respond to StudiVZ's declaratory judgment writ. In Germany, one can respond
27 to a declaratory relief writ by filing a main writ addressing all of the claims set forth in the
28 declaratory judgment writ.

5. In addition, under German law a party bringing in a main writ in response to a declaratory relief action is entitled to choose the forum for the main writ to the extent permitted by procedural law. Ultimately, Facebook decided to address the claims asserted by StudiVZ in its declaratory relief action by filing the main writ in Cologne, which it considered a more experienced forum for the claims in the case. The procedural step of filing a main writ in Cologne was made in defense of StudiVZ's Stuttgart action and is a typical procedural step in Germany in response to a declaratory relief writ. By law, StudiVZ's Stuttgart case will be declared completed once the first oral hearing takes place in Cologne.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 24th day of March, at Frankfurt, Germany.



Dr. Katharina Scheja

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document(s) filed through the ECF system will be sent
3 electronically to the registered participants as identified on the Notice of Electronic Filing (NEF)
4 and paper copies will be sent to those indicated as non registered participants on March 24, 2009.

5 Dated: March 24, 2009.

Respectfully submitted,

6 /s/ Julio C. Avalos

7 Julio C. Avalos

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